

AO 241 (Rev. 09/17)

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**



United States District Court		District: <u>Southern of West Virginia</u>
Name (under which you were convicted): <u>DONALD LEE TAYLOR</u>		Docket or Case No.: <u>2:25-cv-00210</u>
Place of Confinement: <u>South Western Regional Jail</u> <u>1300 GASTON CAPERTON DR.</u> <u>ITALDEN, WV 25625</u>	Prisoner No.: <u># 3558197</u>	
Petitioner (include the name under which you were convicted) <u>Donald LEE Taylor, pro-se</u> <u>petitioner</u>	Respondent (authorized person having custody of petitioner) <u>v. Toby Allen, Superintendent (SWRJ) and</u> <u>The WEST VIRGINIA Parole Board</u> <u>et al Respondents</u>	
The Attorney General of the State of: <u>WEST VIRGINIA PA</u>		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Monongalia County Circuit Court, 75 High St. Morgantown, WV 26505
(NOTE) This Petition Challenges Petitioner's Parole Sentence of (5) years as having
Already been served as of (August 2021)

(b) Criminal docket or case number (if you know): Monongalia Co Circuit Ct (Case No 22-C-117)

2. (a) Date of the judgment of conviction (if you know): In attacking my Parole Sentence on Double Jeopardy
grounds.

(b) Date of sentencing: Effective sentence date (June 21, 1989)

3. Length of sentence: 10 years to life / Petitioner (5) years of Parole has Already been served

4. In this case, were you convicted on more than one count or of more than one crime? ☐ Yes ☒ No

5. Identify all crimes of which you were convicted and sentenced in this case: 1st degree murder, sentenced
to (10 years - life.) Effective sentence date (June 21, 1989); Petitioner in
This Action is Attacking his Parole Sentence of (5) years on Double Jeopardy
and Equal Protection Grounds Violations (NOTE) During the Pendency of (Case No 22-C-
117) in the (Mon. Co Circuit Ct) Petitioner was Released Back to Parole on (Dec. 13, 2023)
The Circuit Ct (Dismissed The Action as moot) However never Provided Petitioner with A
Copy of The Dismissal order (Denying Petitioner his Right to Appeal)

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)
☐ (2) Guilty ☐ (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A (NOTE)

This Action Challenges Petitioner's "custody" as being "Illegal" on the grounds that (Petitioner has already "served his sentence" of (5) years of Parole); Yet Respondents are Refusing to Discharge Petitioner by Restarting Petitioner's Parole credit time served (over and over) in violation of Double Jeopardy, Due Process and Equal Protection of the Law. (And The State Courts Refuse to Intervene or Protect Petitioner's Rights)

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

I should have Discharged my sentence as of (August 2021).

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☒ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

Actually my Right To Appeal was denied Because The Circuit Ct. never provided me with a Copy of Dismissal order.

9. If you did appeal, answer the following: From Mon. Co Circuit Ct (case no 22-C-117)

(a) Name of court: WVA Sct of Appeals (CASE NO 24-448)

(b) Docket or case number (if you know): (CASE NO 24-448)

(c) Result: Refused By order dated (March 13, 2025)

(d) Date of result (if you know): March 13, 2025

(e) Citation to the case (if you know): STATE ex rel Donald Lee Taylor v. Jason Horton, et al. "WVA Parole Bd."

(f) Grounds raised: The Grounds in This Petition Pertain to ① Petitioner being Subjected To Double Jeopardy, and Equal Protection violations Relating to Petitioner's Parole Credit and Parole Discharge (WVA Code 62-12-18) And ② That The STATE Court Process has been ineffective To Protect Petitioner's Rights (or) Rendered Ineffective [28 USC 2254 I (B) (1) (A)].

(Feb 7, 2022) (Note) (WVA Code 62-12-18 Period of Parole Discharge) The Parole Statute was amended and The (second Paragraph) from saying (may not) to "shall be" Discharged in a Period Less than (5) years.

(g) Did you seek further review by a higher state court?

☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: Same as Above

(2) Docket or case number (if you know): Same as Above

(3) Result: Refused by order (March 13, 2025)

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(4) Date of result (if you know): Refused (march 13, 2025)(5) Citation to the case (if you know): Taylor v. Hufford et al. CASE NO 24-448(6) Grounds raised: SAME AS BEING RAISED HEREIN

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes☒ No

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☐ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: SAME AS ABOVE (on pages 1-3)

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: (SAME AS RAISED HEREIN)

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes☒ No(7) Result: N/A

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(8) Date of result (if you know):

N/A

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes☒ No

(7) Result:

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

N/A

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(All grounds to be raised (are) raised herein)
 Petitioner has been denied due process in the state
 courts in violation of (14th Const. Art III 5 & 10) and the
 (5th and 14th Amendments to the US Constitution)

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: (MONTGOMERY CO CASE NO 22-C-117) DISMISSED AS MOOT (12-8-2023)

(8) Date of result (if you know): WVA SCT CASE NO 24-448 Refused (March 13, 2025)

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion? (NOTE) my Right To Appeal was denied Because the Circuit Ct. failed to provide me with a copy of its order dismissing the

(1) First petition: ☐ Yes ☐ No CASE AS MOOT. (The issue was/is not moot)(2) Second petition: ☐ Yes ☐ No(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

The Circuit Ct of Montgomery Co. In (CASE NO 22-C-117) failed to provide me with a copy of its Dismissal order (I filed a late Petition to the WVA SCT (CASE NO 24-448))

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Respondents have been subjecting Petitioner to Violations of Double Jeopardy, Due Process, and Equal Protection Regarding Parole Credit/Discharge in Violation of WVA Code 62-12-18, WVA CONST ART III § 5 and US CONST. 5 & 14.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

As of (August 2021) Petitioner served his (5) years of Parole as mandated by (WVA Code 62-12-18 Period of Parole Discharge); however Respondents (Refused to Discharge Petitioner) by Refusing to credit Petitioner with his Time Served on Parole Prior to Revocation of Parole (Repeatedly Restart Parole Time over and over. In Violation of Double Jeopardy, and have Imposed Illegal Incarceration on Petitioner, without Due Process. In Violation of Petitioner's Rights Protected Under (WVA Code 62-12-18) (WVA CONST ART III § 10) (USCA 5 & 14)

(b) If you did not exhaust your state remedies on Ground One, explain why:

Technically the Issue "has" been Exhausted (MONTGOMERY CO Circuit Ct CASE NO 22-C-117) and (WVA SCT CASE NO 24-448) Both Contain The Double Jeopardy Parole Discharge Claims Raised Herein - This Court should note That When (CASE NO 22-C-117) was "DISMISSED AS MOOT" on (12-8-2023), That the Circuit Ct. Failed to provide Petitioner with a Copy of the Dismissal order) and denied Petitioner his Right to file a "Timely Appeal" - This Parole Claim However was "Fairly Presented" to the WVA SCT of Appeals On (July 25, 2024) (CASE NO 24-448), A Motion for Judicial Intervention was submitted on (February 21, 2025); A Notice to seek Federal Ct Intervention was filed on (March 3, 2025) By order entered (March 13, 2025) the Court made it clear that They "Refused to Intervene"

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(c) **Direct Appeal of Ground One:**(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(ie Post Conviction Habeas Corpus) (see Below)(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Petition for Writ of Habeas Corpus

Name and location of the court where the motion or petition was filed:

Monmouth Co Circuit Court, Monmouth, NJ 08855

Docket or case number (if you know):

CASE NO 22-C-117

Date of the court's decision:

(December 8, 2023) Dismissed as moot (Id p. 21-22)

Result (attach a copy of the court's opinion or order, if available):

(December 8, 2023 Attached)(Note) I was never provided a copy of the Dismissal order - In August 2024 I filed a Motion for Relief from Judgment which was denied (I never received a copy of that order either)

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

(NJ Sup Ct of Appeals (Case No 24-448))1900 Kent Blvd 9th Fl (Rm E-317) Charlotte, NJ 07835

Docket or case number (if you know):

(CASE NO. 24-448)

Date of the court's decision:

March 13, 2025

Result (attach a copy of the court's opinion or order, if available):

(Copy Attached) Id at p 56

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(Note) An ^{untimely} appeal was filed in an original jurisdiction Habeas Corpus because the Circuit Ct of Monmouth Co Denied me my right to file a timely appeal. (The issues themselves were "fairly presented" to the States Highest Ct.)

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

(Administrative Appeals) were filed (Motions for Intervention were filed) (Letters and motions to Both State Courts) (Attorney General) (The State Agencies) (The Governor) were all "Put on notice"

GROUND TWO:

Pursuant to (28 USC 2254 (b)(1)(A)), The STATE Courts Processes have been ineffective to protect the rights of Petitioner (Rendering The STATE Court Process "unavailable"

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

"Respondents" and The "STATE COURTS" have "All" been (Put on notice) to Petitioner's claims raised here going back to (March 2023) and "All" have Refused to take any corrective action. The Petitioner first brought this claim to The Circuit Ct of Montgomery Co. MD (Case No 22-C-117) who Refused to take any action and ended up (Dismissing the case as moot without providing Petitioner a copy of The order of Dismissal). I filed a motion for (Relief from Judgment) which the Court denied (Again without providing me a copy of the order of Dismissal) - I took the issue to the Md Ct of Appeals (Case No 24-248) in (July 2024). On (February 21, 2025) I filed a motion for judicial intervention, on (March 3, 2025) I notified the Court that I intended to seek

(b) If you did not exhaust your state remedies on Ground Two, explain why:

Federal Court Intervention, Their Response was to Deny Relief and Dismiss the case by order entered (March 13, 2025) - These facts and evidence make it clear that The STATE Court Process is Unavailable and ineffective to protect The Rights of Petitioner who is "In Custody" in violation of (Writ Court Act. III S 410) and (US Const. Amend 5 & 14).

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes

☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes

☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

(As Asserted Herein)

Name and location of the court where the motion or petition was filed:

Both the Circuit Ct of (Montgomery Co. Md) and The Md Ct of Appeals (Case No 22-C-117) (Case No 24-248)

Docket or case number (if you know):

(Mont Co Case No 22-C-117) (Md Ct Case No 24-248)

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Date of the court's decision: (S) (December 11, 2023) and (March 13, 2025)

Result (attach a copy of the court's opinion or order, if available): Copy of Circuit Court of Montgomery Co (Proposed) order dated December 8th 2023 Copy of WVA Set of Appeals dated (March 13, 2025).(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Raised an Appeal in the WVA Set of Appeals (Case No 24-448)

Docket or case number (if you know): (Case No 24-448)

Date of the court's decision: (March 13, 2025)

Result (attach a copy of the court's opinion or order, if available): Refused by order entered (March 13, 2025)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you

have used to exhaust your state remedies on Ground Two: "NOTICE WAS GIVEN TO THE WVA SET OF APPEALS ON (March 3, 2025) THAT PETITIONER INTENDED TO SEEK FEDERAL CT INTERVENTION PURSUANT TO (28 USC 2254)(B)(1)(A) (ie UNAVAILABLE STATE COURT PROCESS INSUFFICIENT TO PROTECT THE RIGHTS OF PETITIONER)

GROUND THREE:

"Procedurally Petitioner was denied his right to file a 'Timely Appeal' to the WVA Set of Appeals and thus denied meaningful Due Process. IN THE STATE COURTS."

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): 24SCA 5-14

ON (December 8, 2023) The Circuit Ct of Montgomery Co (Dismissed Case No 22-C-117) (as meet) and ^{Therby} failed to provide Petitioner with a Copy of The "Proposed order of Dismissal" effectively denying Petitioner his right to file a Timely Appeal - nevertheless The same issue was "fairly presented" to the WVA Set of Appeals in (Case No. 24-448) which was thereafter Refused by order entered (March 13, 2025):

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(b) If you did not exhaust your state remedies on Ground Three, explain why:

Actually The Issues Presented should be deemed "Exhausted" Because The facts and Evidence Shows that The States Highest Ct has had a Chance to Correct the Injustices Committed Against Petitioners, but Refused to take Corrective Action (Rendering that the STATE COURT Process is unavailable and ineffective to protect Petitioner's Rights).

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

In Habeas Corpus AS STATED ABOVE (ie Mon Co Circuit Ct CASE NO 22-C-117) "WVA Sct CASE NO. 24-448"

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

"NOTICE" to The WVA Sct of Appeal (To seek Federal Ct Intervention.)

Name and location of the court where the motion or petition was filed:

WVA Sct of Appeal (CASE NO 24-448)

Docket or case number (if you know):

(CASE NO 24-448)

Date of the court's decision:

MARCH 13, 2025

Result (attach a copy of the court's opinion or order, if available):

(COPY ATTACHED)

(3) Did you receive a hearing on your motion or petition?

☐ Yes☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

This Federal Court

Docket or case number (if you know):

CASE NO 24-448

Date of the court's decision:

(MARCH 13, 2025)

Result (attach a copy of the court's opinion or order, if available):

(COPY ATTACHED)

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Raised by "NOTICE of Intent" to seek Federal Court
 Intervention Pursuant to (28 USC 2254)(b)(1)(A)
 Dated (March 3, 2025)

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

The NOTICE submitted above
 was sent to the Court, (Administrative Agencies) and The
 (Attorney General's office / Counsel of Record.)

GROUND FOUR:

n/a

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

n/a

(b) If you did not exhaust your state remedies on Ground Four, explain why:

n/a

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

n/a

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

n/a

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Name and location of the court where the motion or petition was filed: _____

N/A

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(3) Did you receive a hearing on your motion or petition?

☐ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

N/A

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

N/A

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: n/a

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

 n/a

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

 n/a

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

 n/a

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: n/a

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: n/a

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: n/a

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

n/a

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N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

(Order) Petitioner "Released and
"Discharged" From any Further Illegal Custody, Declaratory Judgment
and a Permanent Injunction to prevent Future Harass,
or any other relief to which petitioner may be entitled.

x [Signature]
Signature of Attorney (if any) *pro-se*
petitioner pro-se

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on (March 27th 2025) (month, date, year).

Executed (signed) on (March 27th 2025) (date).

x [Signature]
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.